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ATTORNEYS FOR PLAINTIFFS

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MONTANA
HELENA DIVISION

DAVID FACINCANI and
BECKY FACINCANI,

Plaintiffs,

v.

THE UNITED STATES OF AMERICA

Defendant.

) CIVIL CAUSE NO: CV 07 31-H-CCL

COMPLAINT

Plaintiffs, by their undersigned counsel, for their claims for relief, allege as follows:

PARTIES

I.

At all times material hereto, David Facincani is and has been a resident of Butte, Montana who has received much of his medical care through the Veteran's Administration (hereinafter referred to as VA) inasmuch as he is a Vietnam war veteran who served his country in military duty in that conflict. Becky Facincani is his spouse;

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II.

At all times material hereto, the VA is and has been federally funded by the United States of America to provide medical services to patients who have performed military service. Pertinent to this case, the VA provided medical care to David Facincani through its hospital facility located at Fort Harrison, Montana;

III.

In providing this care, the VA, through its employees, acted as an agent of the United States of America within the scope and course of its agency relationship;

JURISDICTION

IV.

This Court has subject matter jurisdiction over this case pursuant to the Federal Tort Claims Act, Title 28 U.S.C. Sections 2671 *et. seq.*. Moreover, exhaustion of remedies has occurred administratively, inasmuch as this claim was submitted to the Department of Veterans Affairs Office of Regional Counsel and, on December 4, 2006, a written denial was forwarded. Attached hereto and incorporated herein by reference as EXHIBIT A is a copy of that written denial. This action has been filed within six (6) months thereof and is, therefore, timely;

VENUE

V.

Venue of this action is appropriate in this federal division of this Court inasmuch as the acts, errors and omissions hereinafter alleged occurred at the Fort Harrison VA Hospital in Helena, Montana;

NATURE OF THIS CASE

VI.

This is a medical malpractice action for recovery of personal injuries sustained by David Facincani as a result of the medical negligence of Defendants when they prescribed and administered a contraindicated medication, Indocin, to him, thereby causing acceleration of his pre-existing renal disease, acute renal failure and the consequently premature need for

1 lifelong dialysis to address his iatrogenic loss of kidney function. The prescription and
2 administration of this medication was below accepted standards of medical care and,
3 accordingly, constitutes negligence;

4 **FACTS OF THIS CASE**

5 **VII.**

6 On or about May 30, 2001, David Facincani sought medical care from a private clinic
7 in Butte, Montana for treatment of pain in his left knee which resulted from a fall from a
8 ladder. A physician's assistant at this clinic reached the diagnosis of gout and prescribed
9 Indocin. This medication is contraindicated for patients such as David Facincani who have a
history of compromised renal function and diabetes;

10 **VIII.**

11 On or about June 15, 2001, David Facincani sought treatment for his left knee pain
12 from the Fort Harrison VA Hospital. He was evaluated in this facility by Katherine
13 Thompson, a physician's assistant. She also prescribed Indocin for this patient, thereby
14 aggravating the insult to his kidney function, causing him to suffer permanent renal failure
and rendering it necessary that he be placed on lifelong dialysis;

15 **IX.**

16 Suit was filed against both the private and governmental defendants in the Second
17 Judicial District Court in Silver Bow County as Cause No. DV-04-142. This was
18 accomplished in a timely fashion and, after a series of negotiations, the claims against the
19 private defendants were resolved and dismissed with prejudice on December 29, 2006. The
claims against the governmental defendants remain in existence in state district court but are
in the process of being dismissed by stipulation inasmuch as the remaining parties agree that
the federal district court has jurisdiction over this matter;

20 **X.**

21 It is believed and, therefore, alleged, that the negligent conduct of Defendants
22 contributed as a substantial factor to David Facincani's acute and irreversible renal failure,
23 the necessity for premature lifelong dialysis, his physical and emotional pain and suffering,
24 ongoing medical expense, loss of income, impairment of his established course of life and,
potentially, foreshortened life expectancy;

XI.

It is further believed and, therefore, alleged, that the negligent conduct of Defendants has caused Becky Facincani to suffer loss of consortium, association, companionship, support and substantial and serious emotional distress.

XII.

The doctrines of aggravation of pre-existing condition and loss of chance are also invoked to satisfy the causation element of this cause of action.

WHEREFORE, Plaintiffs respectfully pray for judgment against Defendants as follows:

1. for all actual damages (both special and general) in a sum to reasonably and fairly compensate Plaintiffs for their damages, injuries and losses;
2. for prejudgment interest on all items so calculable under applicable law;
3. for costs and expenses of suit;
4. for such further and additional relief which to this Court seems just and proper.

Dated this 4th day of June, 2007.

RANDY DIX LAW OFFICE

/s/ Randy K. Dix
RANDY K. DIX

KOMMERS LAW FIRM

/s/ James A. Kommers (by telephone authority)
JAMES M. KOMMERS

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

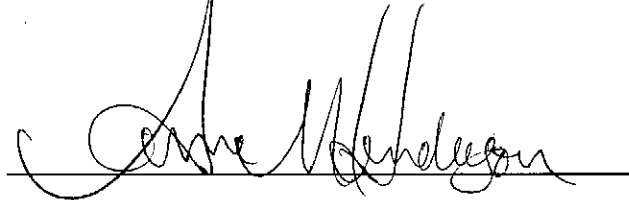
I do hereby certify that on the 4th day of June, 2007, I served a true and correct copy of the foregoing upon the following by mail, hand-delivery, express mail or fax:

Honorable Alberto Gonzales
U.S. Attorney General
Department of Justice
Room B-324
10th & Constitution Avenue N.W.
Washington, D.C. 20530

☒ U.S. mail
☐ Express mail
☐ Hand-delivery
☐ Fax

Civil Process Clerk
U.S. Attorneys Office
P.O. Box 1478
Billings, MT 59103

☒ U.S. mail
☐ Express mail
☐ Hand-delivery
☐ Fax

A handwritten signature in cursive script, appearing to read "Anne Henderson", is written over a horizontal line.